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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

GARY R. CUSHINBERRY,  Plaintiff,  v.  SERGEANT PATRICK VINSON, et al.,  Defendants.
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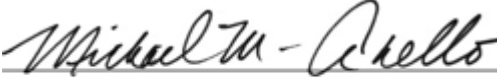
Case No.: 17cv1794-MMA (KSC)  
  
**ORDER GRANTING UNOPPOSED  
MOTION TO DISMISS**  
  
[Doc. No. 7]

Plaintiff Gary R. Cushinberry filed this action against Defendants Sergeant Patrick Vinson, the San Diego Police Department, and the City of San Diego, California (collectively, “Defendants”). *See* Doc. No. 1. On October 25, 2017, Defendants filed a motion to dismiss Plaintiff’s complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). *See* Doc. No. 7. The Court set the motion for hearing on December 4, 2017, meaning that Plaintiff was required to file a response in opposition to the motion or before November 20, 2017. *See* Civ. L.R. 7.1.e.2 (stating that “each party opposing a motion . . . must file that opposition or statement of non-opposition . . . not later than fourteen (14) *calendar* days prior to the noticed hearing”). Plaintiff has not yet filed an opposition brief or statement of non-opposition in response to Defendants’ motion to dismiss. *See* Docket.

1 The Ninth Circuit has held that a district court may grant an unopposed motion to  
2 dismiss where a local rule permits, but does not require, it to do so. *See generally,*  
3 *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Here, Civil Local Rule 7.1.f.3.c  
4 provides, “[i]f an opposing party fails to file the papers in the manner required by Civil  
5 Local Rule 7.1.e.2, that failure may constitute a consent to the granting of a motion or  
6 other request for ruling by the court.” As such, the Court has the option of granting  
7 Defendants’ motion to dismiss on the basis of Plaintiff’s failure to oppose.<sup>1</sup> Generally,  
8 public policy favors disposition of cases on their merits. *See Hernandez v. City of El*  
9 *Monte*, 138 F.3d 393, 399 (9th Cir. 1998). However, a case cannot move forward toward  
10 resolution on the merits when the plaintiff fails to defend his complaint against a motion  
11 to dismiss. Accordingly, the Court **GRANTS** Defendants’ unopposed motion to dismiss  
12 [Doc. No. 7], and **DISMISSES** Plaintiff’s claims without prejudice. The Clerk of Court  
13 is instructed to close this case.

14 **IT IS SO ORDERED.**

15 Dated: December 12, 2017

  
16 Hon. Michael M. Anello  
17 United States District Judge  
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27 <sup>1</sup> Plaintiff’s failure to comply with the provisions of Civil Local Rule 7.1.e.2 also constitutes a failure to  
28 comply with the provisions of this Court’s Local Rules, which serves as an additional basis for dismissal  
under Civil Local Rule 41.1.b.